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In the Supreme Court of the United States

OCTOBER TERM 1973

No. 73-751

PALM BEACH NEWSPAPERS, INC., a Florida corporation, GREGORY E. FAVRE, R. H. KIRKPATRICK, TOM SAWYER and JANE ARPE,

Petitioners,

vs.

LLOYD F. EARLY,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Petitioners,

vs.

LLOYD F. EARLY,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

PREFACE

The Petitioners are the Defendants in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida. The Respondent is the Plaintiff in the Florida Trial Court. No trial has as yet been held on the merits of the Respondent's claim against the Petitioners and no final judgment has as yet been rendered by the Florida Trial Court. The Orders of the Florida Trial Court which the Petitioners seek to have quashed are interlocutory in nature and deal primarily with the Respondent's discovery rights. The review of those Orders by the Florida District Court of Appeal was also interlocutory in nature. Its de-

cision was to allow the Orders to stand without prejudice to the Petitioners to appeal subsequent to final judgment. This was a discretionary decision since the District Court's review was based upon a Petition for Writ of Common Law Certiorari. The following symbols will be used:

(Pet.)—Petitioners' Appendix

(Resp.)—Respondent's Appendix

STATEMENT OF THE CASE

The Statement of the Case in the Petition (pages 5-10) is accepted in part by the Respondent and rejected in part by the Respondent. Certain factual matters should be brought to light.

There are, in fact, two Orders of the Circuit Court of the Seventeenth Judicial Circuit with which the Petitioners express dissatisfaction. The first Order, entered August 8, 1972, ordered the Petitioner, Palm Beach Newspapers, Inc., to produce for inspection its balance sheets *or* statements of net worth for 1969, 1970 and 1971, its profit and loss statements for those years and its corporate tax returns for those years. That Order also required the Petitioner's treasurer to submit to deposition. The Order specifically prohibited the Respondent from disclosing any information obtained to third parties and specifically set forth that these matters were being allowed to be inquired into simply for purposes of pretrial discovery. The Circuit Court did not indicate whether it felt that these matters would be admissible at trial. (Pet. C-1-4)

An Order dated August 28, 1972 was also rendered by the Circuit Court. That Order denied a motion filed by all of the Petitioners to strike the Respondent's claim for punitive damages. (Pet. D-1) The trial of this cause was set for

August 21, 1972 before a jury. While this action has sought both compensatory and punitive damages from the start and has been pending for over three years, it was not until August 7, 1972, some two weeks prior to trial and almost three weeks after the pretrial conference, that the Petitioners moved to strike the Respondent's claim for punitive damages.

Petitioners sought review of both interlocutory orders by means of a Petition for Common Law Certiorari to the District Court of Appeal, Fourth District, of the State of Florida. After the District Court of Appeal rendered its decision unfavorable to the Petitioners, the Petitioners filed a Petition for Certiorari and a direct appeal to the Florida Supreme Court. The Petition for Certiorari was based upon Article V, Section 4(2) alleging "conflict" between the decision of the District Court and decisions of other District Courts and the Florida Supreme Court. The appeal was based upon the allegation that the District Court had construed a controlling provision of the Florida or United States Constitution. The Florida Constitution, Article V, Section 4(2) provides the Florida Supreme Court with appellate jurisdiction to review decisions of District Courts only where the District Court "initially" construed such a provision. In the Petition and the appeal to the Florida Supreme Court, the only matter raised for review was the discovery of the "financial affairs" of the Petitioner, Palm Beach Newspapers, Inc. Although the denial of the Petitioners' motion to strike the claim for punitive damages is mentioned in the Petition and Brief before the Florida Supreme Court, it was not argued as error before that Court and must, therefore, be considered abandoned. At the very least, it is clear the Petitioners did not exhaust their State remedies with reference to this Order. *Banks* v. *California*, 395 U.S. 708 (1969).

The reference by the Petitioners to the act of the Trial Court in granting their motion for summary judgment in part and denying their motion in part is correct. However, this Order and the record before the Trial Court at the time it was rendered is not part of the appellate record. The Order granting partial summary judgment was rendered May 27, 1971, approximately one and one half years prior to the two interlocutory Orders which have given rise to the present appellate litigation.

The Petitioners' statement overlooks the fact that Palm Beach Newspapers, Inc. agreed by stipulation of counsel to answer Interrogatory No. 51 as well as Interrogatory No. 52. Interrogatory No. 52 asked for the same information relating to the Petitioner's subsidiary corporations. (Pet. B-8) It was, however, stipulated between counsel that the answers to these interrogatories need not be furnished until after most of the pretrial discovery was completed and the record reflected whether the Respondent had a meritorious claim. The answers to these interrogatories were to be furnished at pretrial conference held July 19, 1972. (Resp. A7-A9)

At the pretrial conference, the Petitioner's only request with reference to the discovery of its financial circumstances was that the Court limit inquiry to matters dealing with "the facts supporting these figures set forth in the answer to Interrogatory No. 51." The figures set forth in the answer to Interrogatory No. 51 deal with "net worth" as well as "income" of the Petitioner, Palm Beach Newspapers, Inc. In fact, at the pretrial conference, the Circuit Court stated that the deposition was to be so limited and granted the Petitioner's request. (Resp. A9-A10)

The Trial Court's Orders are, of course, interlocutory in character. As such, they are not directly appealable. However, as previously mentioned, the Petitioners did file a Petition for Common Law Certiorari to the District Court

of Appeal, Fourth District of the State of Florida. The District Court heard the case on the merits but denied the relief sought without prejudice to the Petitioners to appeal subsequent to final judgment. The appeal to the Florida Supreme Court was dismissed for lack of jurisdiction and the Florida Supreme Court declined to accept jurisdiction with reference to the Petition for Certiorari.

QUESTIONS PRESENTED

The Respondent takes issue with the questions presented in the Petition (page 4) and respectfully submits that the questions presently before this Court are as follows:

I

DOES THIS COURT HAVE JURISDICTION TO ISSUE A WRIT OF CERTIORARI DIRECTLY TO THE FLORIDA TRIAL COURT WHERE THE DISTRICT COURT OF APPEAL REVIEWED THE ORDER OF THE TRIAL COURT?

II

DOES THIS COURT HAVE JURISDICTION TO REVIEW THE INTERLOCUTORY ORDER OF THE TRIAL COURT?

III

SHOULD CERTIORARI BE GRANTED HEREIN WHERE IT APPEARS THAT THE DECISION OF THE DISTRICT COURT TO ALLOW THE INTERLOCUTORY ORDER TO STAND SUBJECT TO APPEAL FROM AN ADVERSE FINAL JUDGMENT WAS BASED UPON ADEQUATE NON-FEDERAL GROUNDS?

IV

DOES THE CONSTITUTION PROHIBIT THE PRODUCTION OF A DEFENDANT'S FINANCIAL RECORDS SOLELY FOR DISCOVERY PURPOSES WHERE THERE IS A CLAIM PENDING AGAINST THE DEFENDANT FOR WILLFUL AND MALICIOUS CONDUCT?

V

DOES THE CONSTITUTION PROHIBIT A PUBLIC OFFICIAL FROM RECOVERING PUNITIVE DAMAGES IN A LIBEL ACTION UNDER ANY CIRCUMSTANCES?

ARGUMENT

I

Does This Court Have Jurisdiction to Issue a Writ of Certiorari Directly to the Florida Trial Court Where the District Court of Appeal Reviewed the Order of the Trial Court?

The Petitioners claim jurisdiction in this Court pursuant to 28 U.S.C. §1257. (page 2) That statute, however, only confers jurisdiction on this Court to issue writs of certiorari to "the highest court of a state in which a decision could be had". The Petitioners seek a writ of certiorari to the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida—the Trial Court. A Petition for Certiorari was filed by them to the District Court of Appeal, Fourth District of the State of Florida. Although the Respondent's motion to quash the petition as frivolous was originally granted, the District Court, on rehearing, later specifically agreed to hear the Petition. It did, in fact, hear the case. It accepted briefs from the parties and from amicus curiae; it heard oral argument; and it did, in fact, render a decision. Simply because that decision was unfavorable to the Petitioners does not mean that the District Court shirked its jurisdiction. The Florida Supreme Court, of course, specifically held it had no jurisdiction to consider the case, but this was not the situation with reference to the District Court. The District Court specifically held that it did have jurisdiction to consider the case, but, acting within its discretion, denied the Petitioners relief. Under such circumstances "the highest court of a state in which a decision could be had" was the District Court and not the Trial Court. *Williams* v. *Florida*, 399 U.S. 78, 80, footnote 5 (1970); decision to

grant cert. to District Court, 396 U.S. 955 (1969); *Callendar* v. *State of Florida,* 181 So.2d 529 (Fla. 1966); *Dresner* v. *City of Tallahassee,* 375 U.S. 136 (1963); *Gallick* v. *Baltimore & Ohio R.R. Co.,* 372 U.S. 108 (1963). No request has been made for a writ of certiorari to the District Court and this Court is without jurisdiction to render its writ directly to the Trial Court absent a showing that the District Court would fail to obey the mandate of this Court. The Petitioners, having failed to request relief which this Court has jurisdiction to grant, should have their Petition denied.

II

Does This Court Have Jurisdiction to Review the Interlocutory Order of the Trial Court?

The jurisdiction of this Court to grant writs of certiorari in civil cases emanating from state courts is granted by statute. 28 U.S.C. §1257 grants authority to issue writs of certiorari with reference to "final judgments or decrees". The two interlocutory Orders of the Trial Court, the affirmance of those Orders by the District Court of Appeal, the denial of jurisdiction by the Florida Supreme Court, are all decisions which are not final in character. The effect of those decisions is to send the case back for trial on the merits and to allow reasonable pretrial discovery to take place. In *Annotation,* 89 Law Ed. 1186, it is pointed out that even the reversal of a final judgment by "the highest court of a state" is not a final judgment which this Court has power to review if the case is remanded for new trial. Numerous decisions of this Court are cited in that annotation. As Chief Justice Marshall pointed out in *Houston* v. *Moore,* 3 Wheat 433 (1818):

> "The cause may yet be finally determined in favor of the plaintiff in the state court."

Please also see *Moore's Commentary on the U.S. Judicial Code*, 568:

> "A judgment of the highest state court remanding a case for further proceedings, instead of dismissal, is not final even though it disposes of the federal issues."

In *Gospel Army* v. *City of Los Angeles*, 331 U.S. 543 (1947), there was an unqualified reversal of a lower Court proceeding by the California Supreme Court. Under the law of California, such a reversal is effective to remand the cause "for a new trial and places the parties in the same position as if the case had never been tried". Under such circumstances, this Court dismissed the petition for certiorari saying:

> "Under Section 237 of the Judicial Code, 28 U.S.C. Section 344 [now Section 1257] only 'final judgments' of state courts may be appealed to this court. And it frequently has been said that for a judgment of an appellate court to be final and reviewable for this purpose it must end the litigation by fully determining the rights of the parties, so that nothing remains to be done by the trial court 'except the ministerial act of entering the judgment which the appellate court . . . directed'. *Department of Banking, State of Nebraska* v. *Pink*, 317 U.S. 264, 63 S.Ct. 233, 235, 87 Law Ed. 254. Thus, where the effect of the state court's direction is to grant a new trial, the judgment will not be final."

In *Market Street Railway Co.* v. *Railroad Commission*, 324 U.S. 548 (1945), this Court stated:

> "Our jurisdiction to review a state court judgment is confined by long standing statute to one which is final. Judicial Code, Section 237, 28 U.S.C., Section 344, 28 U.S.C.A. 344 [now Section 1257]. Final it must be in two senses: It must be subject to no further review

> or correction in any other state tribunal; it must also be final as an effective determination of the litigation and not of merely interlocutory or intermediate steps therein. It must be the final word of a final court."

Please also see *Southern Pacific Co.* v. *Gileo,* 351 U.S. 493 (1956).

The statute was designed for cases such as the case sub judice. To grant jurisdiction to this Court to review every interlocutory order of every trial court in this nation would flood this Court with petitions from every corner of the country. It may be that after a trial on the merits, the Petitioners will be found not to be liable or a settlement may even be effectuated prior to trial. This Court's case load is burdensome enough without having to review interlocutory orders of trial courts.

III

Should Certiorari Be Granted Herein Where It Appears That the Decision of the District Court to Allow the Interlocutory Order to Stand Subject to Appeal from an Adverse Final Judgment Was Based upon Adequate Non-Federal Grounds?

In an unbroken line of decisions, this Court has held that it rests with each state to prescribe the jurisdiction of its appellate Courts, the mode and time of invoking that jurisdiction and the rules of practice to be applied in its exercise. Moreover, when a State Court, in entering the order attacked in this Court, does so on a non-federal ground, this Court has held it is without jurisdiction to review such order. *Newman* v. *Gates,* 204 U.S. 89 (1907); *John* v. *Paullin,* 231 U.S. 583 (1913); *Atlantic Coastline R.R. Co.* v. *Mims,* 242 U.S. 532 (1916); *Central Union Telephone Co.* v. *City of Edwardsville,* 269 U.S. 190 (1925);

McMaster v. *Gauld*, 276 U.S. 284 (1927); *Wolfe* v. *State of North Carolina*, 364 U.S. 177 (1960). This principle is axiomatic and is concisely summarized in *Stern and Gressman, Supreme Court Practice*, 105:

> "The Supreme Court has consistently adhered to the self-imposed principle that it will not review a state court judgment based upon an adequate and independent non-federal ground, even though a federal question be involved and perhaps wrongly decided."

In *Henry* v. *Mississippi*, 379 U.S. 564 (1965), this Court stated:

> "It is, of course, a familiar principle that this court will decline to review state court judgments which rest on independent and adequate state grounds, even where those judgments also decide federal questions. The principle applies not only in cases involving state substantive grounds, *Murdock* v. *City of Memphis*, 2 Wall 590, 22 Law Ed. 429, but also in cases involving state procedural grounds . . . under the view taken in Murdock of the statutes conferring appellate jurisdiction on this court, we have no power to revise judgments on questions of state law. Thus, the adequate non-federal ground doctrine is necessary to avoid advisory opinions."

The District Court's decision to allow the Trial Court's Orders to stand may have, and probably did, turn upon State procedural rules. Under Florida law, the special circumstances under which an Appellate Court may reverse an interlocutory order by writ of common law certiorari exist only when there has been a clear showing that the order of the Trial Court departed from the essential requirements of the law *and* the petitioner does not have a full, adequate and complete remedy by appeal after final

judgment. *Marlowe* v. *Ferreira,* 211 So.2d 228 (Fla. 2 DCA 1968); *Taylor* v. *Board of Public Instruction,* 131 So.2d 504 (Fla. 1 DCA 1961); *Employers Fire Insurance Co.* v. *Bianchard,* 234 So.2d 381 (Fla. 2 DCA 1970). In fact, even if it were assumed arguendo that the Trial Court Order departed from the essential requirements of the law, an Appellate Court should not grant common law certiorari relief unless it has been convinced that the petitioners have no other adequate remedy, such as by appeal after final judgment. *Wolf* v. *Industrial Supply Corp.,* 62 So.2d 30 (Fla. 1952).

Turning first to the latter Order of the Circuit Court denying the Petitioners' motion to strike the Respondent's claim for punitive damages, it is clear that the Order does not depart from the essential requirements of *established* law. The Petition for Writ of Common Law Certiorari sought to have the District Court expand the constitutional privilege afforded those who would libel public figures in order to insulate them from punitive damages for their malicious acts. Two years ago in the case of *Rosenbloom* v. *Metromedia,* 403 U.S. 29 (1971) this Court refused to take such a revolutionary step. How, then, can it be said that the Circuit Court departed from the established law? Procedurally the Petitioners had no basis to seek a reversal of the interlocutory Order. Review was granted and the District Court rendered a decision. That decision was that procedurally the Petitioners must wait and appeal these Orders subsequent to an adverse final judgment.

Turning now to a consideration of the Order entered August 8, 1972, the District Court undoubtedly found there was no departure from *established* judicial principles or any irreparable harm. Even assuming that *for purposes of pretrial discovery* the Order was improper, there has been no showing of irreparable harm. The Order clearly pre-

cluded any disclosure of the information obtained to third parties and the issue of its admissability at trial has not as yet been placed before the Trial Court.

The District Court, in the instant case, merely denied the Petition for Common Law Certiorari because the criterion for granting such a petition was not demonstrated. The District Court specifically gave the Petitioners leave to appeal subsequent to final judgment. More than sufficient procedural basis exists for the District Court's decision. The same issues may later present themselves to the District Court subsequent to final judgment. Under such circumstances, this Court should not render "an advisory opinion".

IV

Does the Constitution Prohibit the Production of a Defendant's Financial Records Solely for Discovery Purposes Where There Is a Claim Pending Against the Defendant for Willful and Malicious Conduct?

The August 8 Order of which Palm Beach Newspapers, Inc. complains required the Petitioner to disclose its balance sheets or statements of net worth and its profit and loss statements and corporate tax returns for 1969, 1970 and 1971. That Order, *at the Petitioner's request,* prohibited the disclosure of any of the information obtained to third parties. The well-established law of Florida is that a Trial Court possesses broad discretion in granting or refusing discovery motions and also in protecting the parties against possible abuse of discovery procedures, and only abuse of this discretion would constitute reversible error. *Orlowitz* v. *Orlowitz,* 199 So.2d 97 (Fla. 1967); *Parker* v. *Parker,* 182 So.2d 498 (Fla. 4 DCA 1966). There has been no showing of an abuse of discretion by the Circuit Court.

Incorporated in the Petitioners' argument that the August 8, 1972 Order was erroneous is the statement: "The State Court was in error when it failed to grant Petitioners' Motion for Summary Judgment." (page 13) Such a statement is devoid of the appellate record (which fails to include the summary judgment motion, the order on that motion, and the deposition testimony of malice and conduct bordering on the criminal).

At page 15 of the Petition it is argued that discovery of the Petitioner's finances should be deferred until "prima facie proof of the right to recover punitive damages" is made. Conveniently the Petitioners exclude all deposition testimony from the appellate record. How, then, can they expect this Court to know if such a prima facie showing has already been made? Please note also that such an argument was never raised at the Trial Court level although the Respondent *voluntarily* deferred such discovery. It was not until two weeks before trial that the Respondent insisted on his right to know the truth about the Petitioner's financial circumstances. If, after establishing a prima facie case for punitive damages and waiting two weeks before trial before demanding information relating to a defendant's true financial circumstances, a plaintiff can be barred from gaining knowledge of those financial circumstances, the plaintiff cannot intelligently place evidence before the jury as to the sum of money which would necessarily be awarded to punish the defendant. To establish such a rule of law would be to effectively abolish punitive damage claims in libel actions. Only two years ago a majority of this Court declined to take such a revolutionary step. See *Rosenbloom* v. *Metromedia*, supra.

New York Times Co. v. *Sullivan*, 376 U.S. 254 (1964) and its long progeny of cases establish the manner in which freedom of speech is to be protected. Assuming a plaintiff can meet the constitutional burden of *New York*

Times Co. v. *Sullivan,* that plaintiff has every right to recover punitive damages as well as compensatory damages. Only by gaining accurate facts about the defendant's financial circumstances may a plaintiff effectively prosecute his claim for punitive damages. There is no established rule of law or constitutional privilege which bars a plaintiff from gaining this information.

Punitive or exemplary damages are awarded as punishment to a defendant and as a warning and example to deter him and others from committing similar offenses in the future. *Miami Beach Lerner's Shops, Inc.* v. *Wallco Manufacturing of Florida, Inc.,* 106 So.2d 233, 236 (Fla. 3 DCA 1958); *Hutchinson* v. *Lott,* 110 So.2d 442, 445 (Fla. 1 DCA 1959); *Fisher* v. *Miami,* 172 So.2d 455 (Fla. 1965). An award of punitive damages while discretionary, should be properly based upon two factors: (1) The ability of the defendant to pay—his financial resources and pecuniary circumstances—*Mayborn* v. *Kuntz,* 56 So.2d 720, 722 (Fla. 1952); *Jones* v. *Greeley,* 6 So. 448 (Fla. 1889); *Hutchinson* v. *Lott,* supra, at pages 445 and 446; and (2) The enormity of the offense which has occasioned the injury.

In determining a defendant's pecuniary circumstances, the jury and the Court have the right to be enlightened as to *both* the defendant's annual revenue and its net worth. As the Florida Supreme Court stated in *Jones* v. *Greeley,* supra:

> "The pecuniary circumstances of the defendant is a proper matter of evidence. Obviously, what would be pecuniary punishment to a man of small means would not be felt as such by one of large means. . . ."

In *Mayborn* v. *Kuntz,* supra, it was held:

> "A verdict of $1,000.00 against a man with a small amount of property, or against a man who earns his

> living 'by the sweat of his brow' may be severe punishment, while the same amount of damages against a man worth a quarter of a million dollars would be no punishment."

At any rate, whether or not a jury can be advised as to a defendant's annual revenue and net income is not the question presently before this Court. The only issue before this Court deals with pretrial discovery of this information. These matters are within the scope of our discovery procedures. Simply because the Petitioner has answered interrogatories setting forth its conclusionary statements as to its net worth and income does not bar the Respondent from testing the creditability of those statements by obtaining the entire factual picture of the Petitioner's finances. The Court is respectfully referred to the case of *Orlowitz* v. *Orlowitz*, supra, at page 98, citing from the *Parker* v. *Parker*, supra, decision:

> "We must say, based upon our understanding of the Rules and the philosophy behind them, that we do not look with favor upon the husband's position in not wishing to reveal any of the details of his financial position and his effort to bridle the dependents' discovery rights by substituting his secondary non-verifiable conclusion in lieu of primary detailed facts. The adversary and the Court are entitled to the whole factual picture to the end that an independent complete understanding and evaluation may be had."

Obviously, net worth and wealth derive from yearly revenue. It is respectfully submitted that the Petitioner's assertions as to its net worth and income are less than truthful. A disclosure of the vast income of this corporate litigant will demonstrate that it must necessarily have accumulated wealth far in excess of what it had admitted. A jury, in assessing punitive damages, has a right to be

aware of all factors going to "the wealth, character and influence" of a defendant. *Lehman* v. *Spencer Ladd's, Inc.*, 167 So.2d 731, 738 (Fla. 1 DCA 1964), affirmed in part, reversed in part on separate grounds, 182 So.2d 482 (Fla. 1965). A disclosure of the Petitioner's true income will lead to exposure of the enormous wealth of the Petitioner which it continues to amass yearly.

Despite the Petitioner's revolutionary arguments, the only portion of the Circuit Court's Order of August 8th which the Petitioner truly asserts as erroneous and devotes any detailed discussion to, deals with the production of the Petitioner's corporate income tax returns. Of course, corporate income tax returns necessarily contain an operating statement for the year. The information set forth in those returns must be factually correct under the penalty of perjury. As discussed above, truthful disclosure of the revenue the Petitioner receives each year would demonstrate the "whole factual picture" of the Petitioner's pecuniary circumstances. Indeed, it may very well work to the Petitioner's benefit, since complete disclosure may demonstrate that most of the Petitioner's wealth is in fixed assets and is in such a non-liquid state that even a small punitive damage award would punish it severely. At any rate, the Respondent has a right to discover this situation prior to trial.

In support of the argument that federal income tax returns are privileged, the Petitioner is able to cite this Court to only one decision, *Federal Savings & Loan Insurance Corporation* v. *Krueger*, 41 Law Week 2040, a Federal District Court decision from Illinois. This is not the law of a majority of the Federal Courts. Florida law has also held these returns not to be privileged. See *Fryd Construction Corporation* v. *Freeman*, 191 So.2d 487 (Fla. 1966), page 489:

"In this State copies of income tax returns have not been held to be privileged; therefore, they may be used in State court proceedings where they are relevant."

The Third District Court of Appeal did not say that these were not privileged for the plaintiff but were privileged for the defendant. The District Court stated that the returns must be produced where they would lead to relevant information. That is the situation in the case at bar.

Numerous federal decisions have required defendants to produce their income tax returns. The contention that the defendant did not put his returns in issue and therefore may not be required to produce same has been rejected by a majority of the Federal Courts. See *June* v. *George C. Patterson Co.*, 155 F.2d 963 (7th Cir. 1946); *Paramount Film Distributing Corporation* v. *Ram*, 91 F. Supp. 778, 781 (D.C. S.C. 1950); *Connecticut Mutual Life Insurance Co.* v. *Shields*, 18 FRD 448 (D.C. N.Y. 1956); and *Mullen* v. *Mullen*, 14 FRD 142 (D.C. Alaska 1953). At page 143 of the *Mullen* decision, it was stated:

"The second item is the personal income tax return of the defendant Mullen's wife. Some of the authorities cited by the defendant Mullen clearly support the proposition that income tax returns are not available under Rule 34, *but the numerical weight of authority appears to be to the contrary.* Since the question has not been before the Supreme Court or the Court of Appeals for the Circuit, the question is an open one in this court. On the authority of 4 Moore 1168, I am inclined to the latter view. C. F. Nola Electric Company, Inc. v. Reilly, 11 FRD 103, cert. denied, Reilly v. Goddard, 340 U.S. 951, 71 S.Ct. 570, 95 L.Ed. 685." [Emphasis supplied.]

The Petitioner, Palm Beach Newspapers, Inc., has demonstrated no constitutional basis for this Court to intercede in this controversy or to reverse the Trial Court's interlocutory Order allowing reasonable discovery.

V

Does the Constitution Prohibit a Public Official from Recovering Punitive Damages in a Libel Action under Any Circumstances?

There is no constitutional privilege to maliciously and unjustifiably defame a public official. Simply because the victim of one's defamatory comments happens to be a public official does not insulate a defendant from punitive damages. A review of *New York Times Co.* v. *Sullivan,* supra, and its progeny fails to disclose a single decision which would grant a malicious defendant immunity from punitive damages because his victim was a public official. In fact, the Respondent has failed to locate a single majority opinion, state or federal, in the history of American jurisprudence which holds that a public official may not obtain punitive damages against a defendant in a libel action. In brief, there is simply no authority for the Petitioners' assertion. Clearly, the Trial Court followed applicable existing principles of law in denying the motion to strike the claim for punitive damages.

Actually, little needs to be said regarding this point. Although Petitioners raised this point as Question No. 2 (page 4), they failed to argue it in the Petition. In fact, this point was also not raised before the Florida Supreme Court. The decision of the District Court was rendered March 16, 1973 and Petition for En Banc Rehearing denied April 10, 1973. The point was not again raised until its brief mention in the Petition before this Court. Under such circumstances, the question should not be considered.

CONCLUSION

The Petition does not present any questions warranting review by the Court and should be denied.

Respectfully submitted,

Jos. D. Farish, Jr.
Of Counsel

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Attorneys for Respondent

APPENDIX A

Transcript of Proceedings at the Pretrial Conference Held July 19, 1972 at the Broward County Courthouse, Fort Lauderdale, Florida, before Honorable George Richardson, Jr., Presiding Judge.

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA.

CIVIL ACTION

No. 71-10447—Richardson

LLOYD F. EARLY,
Plaintiff,

vs.

PALM BEACH NEWSPAPERS, INC., ET AL.,
Defendants.

Fort Lauderdale, Florida
July 19, 1972
10:00 o'clock A.M.

APPEARANCES:

FARISH & FARISH, ESQS.,
by JOSEPH D. FARISH, ESQ., of counsel,
Appearing on behalf of the Plaintiff.

HEUER & ALBURY, ESQS.,
by CECIL H. ALBURY, ESQ., of counsel,
appearing on behalf of Defendant.

RYAN, TAYLOR, BOOKER & LAW, ESQS.,
by JOHN F. LAW, JR., ESQ., of counsel,
appearing on behalf of Defendant.

The above-styled case came on for pretrial conference before the Honorable GEORGE RICHARDSON, JR., Presiding Judge, at Broward County Courthouse, Fort Lauderdale, Broward County, Florida, on the 19th day of July, 1972, commencing at 10:00 o'clock A.M.

[2] Thereupon:

The following proceedings were had:

MR. FARISH: Judge, I did not attempt to haul my exhibits in. They are available in my office. I haven't had a chance to look at opposing counsel's. I'm afraid they would have been destroyed if I had brought them today, on a day such as this. They are available right there at the office.

THE COURT: On your catalogue you got exhibits, and then numerous Post, Post/Times and Times articles maligning Plaintiff, and then you have a group of names. What names are those, people that have written articles or what?

MR. FARISH: Names of witnesses on the front, sir—I'm sorry. Those names afterward?

THE COURT: Yes.

MR. FARISH: I have two pages.

MR. ALBURY: You have two page fours.

MR. FARISH: I have two page fours. Should have been—

THE COURT: These are all witnesses then?

MR. FARISH: Yes.

THE COURT: How could we handle the exhibits then? You have a right to see them.

MR. ALBURY: We have made ours available as of the 13th and they are setting over here. I don't know what he's talking about when he says numerous articles. The lawsuit has been limited to certain specific paragraphs.

[3] MR. FARISH: Not limiting our evidence though.

MR. ALBURY: If he wants to bring in a lot of evidence in the form of newspaper articles, it's totally immaterial. He has to prove the articles that he sued on, Number 1, are false; and Number 2, were directly falsified for print with a high awareness of probable falseness, and that's all that's involved. Ill will, the Supreme Court has said, has nothing to do with it. You have to intend to harm through falseness.

I don't even, you know—The articles aren't even identified.

I don't—I'll be happy to go to Joe's office and look at what he has.

MR. FARISH: Well, this is in proper order, Your Honor. Articles being sued upon are one thing. Evidence is another. We anticipate using these as evidence. We think it's impossible to list them as such.

MR. LAW: Your Honor, we have here everything we intend to use as exhibits. That's what the pretrial order calls for.

THE COURT: That's right.

MR. FARISH: Judge, if I would have brought them today, it was raining, I just didn't feel it was proper to do that.

THE COURT: You made up your mind just before you left?

MR. FARISH: Yes, sir. We couldn't haul them out in the rain like this. They would have been ruined.

MR. ALBURY: Well, ours are a little damp, but they [4] aren't ruined.

MR. FARISH: Well, we have many more than you have.

THE COURT: Well, all right. Supposing he goes over to your office and there's some objection or something, then what happens?

MR. FARISH: Well, sir, you couldn't rule on those now, I don't think, sir. I mean we offer them now as prospective use of same. I might not use them all.

THE COURT: But he has to be aware of what you're going to use.

MR. FARISH: Correct. Right, sir. I'll show him those. They are all there.

THE COURT: But the Court isn't going to have any list so I know whether you showed it to him or not.

MR. FARISH: Well, we can compile a list there at the time.

THE COURT: In other words, the idea is for me to know that this was—that he did see this, and there should be some list showing that he did see it, and that you intend to use it and they are aware of it, otherwise he just looks at a bunch of articles and I don't know.

MR. FARISH: All right, sir. He can look at the articles and make a list of each one of these.

MR. ALBURY: Well, Judge, I'm not going to do his work for him.

[5] THE COURT: It's not his duty to prepare the list.

MR. FARISH: All right, sir. I'll prepare a list and he can read the list, if he can read. I'll just write it down for him, see.

MR. ALBURY: I do think I'd be able to read it if it is written legibly.

MR. FARISH: Good.

THE COURT: Well, we are not going to get very far today, I can see that.

MR. FARISH: I'll tell you what we can do. He can initial the back of each article that we are going to show him. How would that be?

I'm not saying, and I don't think this is the time to rule on it, that Your Honor would want to rule on the ad-

missibility of them at the present time. If that were the case, we wouldn't bother with the trial because it has to have testimony to make them admissible, but I'll show them to him. He can initial them and date them, each one of these, sir, and if he wants to object to them, he can put objection as to what it is right on the back of each one. I make that as a suggestion.

THE COURT: Suits me, if it suits the other side.

MR. ALBURY: I'd be happy to look at the articles.

MR. LAW: Judge, the exhibits are supposed to be furnished according to the pretrial order before Your Honor where we can state whether we have any objection or whether we [6] are going to let—whether we consider them irrelevant or immaterial, and the Court is supposed to have a list prepared to see them. To go to his office and go through a bunch of articles that have been initialed, it's entirely improper.

MR. ALBURY: Well, I'm concerned, too. What about our exhibits? We have that stack over there and we made them available to Mr. Farish on July 13th. He never came to look at them. Are we going to go through those two boxes item by item? Most of those are documents which they produced under a motion to produce, and I'm sure that they know what they are.

THE COURT: What I'm looking for is my pretrial order.

MR. FARISH: Rather than consume the time of the Court, Your Honor, I would suggest that I do the same thing with their particular articles and/or exhibits. I'll initial them, and if I agree on admissibility, okay; if not, I'll say objection.

MR. ALBURY: Your order is dated May 31st, Judge.

THE COURT: May 31st?

MR. LAW: That was the second order setting this one up. There was a previous order.

MR. ALBURY: There was a prior order. The first order was March 30th, then it was changed.

THE COURT: Well, it's a printed form.

MR. ALBURY: Yes, sir. There is a printed form attached to it.

THE COURT: Well, do you want to do that or not? I'll [7] go along with what you—

MR. ALBURY: They are there, Judge. Whatever the Court wants to do. We wrote Mr. Farish on July 13th and said, "Here they are. We can't bring them over there, but you can come to the office any time you want to and go through them."

I think it's a waste of the Court's time to sit and go through those things item by item. There are two years of tape print-outs of board minutes.

MR. FARISH: Is that what most of your stuff is?

MR. ALBURY: That entire box is that. The rest of them are things—

MR. FARISH: Your Honor, I can take care of that. As to the authenticity of it, I would have no objection, but provided it's relevant and material.

THE COURT: Well, let's back up. Ay questions that you would like on the witnesses?

MR. ALBURY: As to the witnesses, no, sir.

We have pending before the Court a motion for permission to take another deposition. This is the original. We didn't file it because we just had it done Monday. I'll serve a copy on him. We had it originally set back in June, served Claude Kirk with a return to show it was served on him personally. Thereafter, Mr. Farish called and asked that it be changed to June 28th, which we did. We sent letters confirming, which are attached to the motion. Thereafter, he called and asked that it [8] be changed again and defense declined to change it, and he filed a motion for a protective order, wherein he alleged,

among other things, that the witness, Claude Kirk, was unavailable at the time to testify. Mr. Farish, of course, is Mr. Kirk's personal attorney. We have attached copies of their pleadings in other cases now pending in this county's circuit court, and Judge Warren heard the motion, I believe at the time Your Honor was in trial, he ordered the deposition of Mr. Kirk be taken last Thursday and we showed up at 10:00 o'clock to take it, Mr. Kirk's deposition. We were presented with an affidavit from Mr. Farish stating that he had served one of Mr. Kirk's aids, and Mr. Kirk did not appear. We were there at that time on Thursday. The pretrial conference is today and the pretrial order states all depositions be concluded, and through the changing of dates, we were never made aware of the fact that Mr. Kirk was not going to appear. We thought he had been served properly because the sheriff's return showed he was served personally, and we were— We suggest to the Court that we be permitted to take his deposition or that Plaintiff not be permitted to use him at the time of trial.

MR. LAW: He's listed as a witness on the pretrial.

MR. FARISH: Your Honor, a little recap on this situation. I was under the impression that Governor Kirk had been served properly and we were working under that erroneous impression, when it was discovered, and I contacted the Governor [9] and asked him if he would appear, he said, "No. I haven't been served." I checked with the sheriff's department and that's true. He was not served. That's the problem that they are facing. They wait till the last minute, the 11th hour, to take a deposition. They knew about Governor Kirk for years.

MR. ALBURY: Judge, he keeps saying that, but we had it set way back in June, but because of him it was changed and he got a court order changing it.

THE COURT: I'll grant you the right to take the deposition.

MR. FARISH: I can't produce him. I might be his attorney, but as you well know, Governor Kirk has a mind of his own.

THE COURT: If he gets served, he'll come.

MR. FARISH: I can't produce him.

MR. ALBURY: The sheriff's return shows it was personally served upon him. He was served by a guy by the name of Hoffman. He says he told the Governor about it by telephone.

MR. FARISH: Now, have you produced your net worth and your income?

Your Honor, we'd like to reserve the privilege of interrogating someone about this. We had an agreement between counsel to do this and we had a reneging of counsel in doing it before. That's why we are just now getting it. We had a motion—

MR. LAW: The order provides that it be presented [10] at the pretrial conference.

MR. FARISH: 30 days before, and you didn't do it.

I'd like to have the privilege, sir, of examining somebody. Somebody's sworn statement doesn't mean anything to me unless I can interrogate the person.

MR. ALBURY: Judge, to clear the air on this, the original agreement on 30 days was when there was no pretrial conference set, and Joe and I agreed to 30 days before trial. Then Your Honor set a pretrial conference and the original order provides it be made available at pretrial conference.

MR. FARISH: And, Your Honor, there is also an agreement on the record and I can show it to him where we had asked him to produce it and he said he would as to the—what's this other one?

MR. ALBURY: Cox Enterprises

MR. FARISH: Cox Enterprises, and he reneged on that one, too.

MR. ALBURY: The Court entered an order limiting that they are not allowed—

MR. FARISH: After you reneged, when you had agreed to do it. You don't deny that?

MR. ALBURY: I don't deny that I agreed to do it. I don't represent them and they are not going to get them.

MR. FARISH: I would like Your Honor to at least give me the privilege of interrogating under oath—who's this man?

[11] MR. ALBURY: Roswell, Ronald Roswell.

MR. FARISH: Is he local?

MR. ALBURY: Yes. He's the treasurer.

MR. FARISH: Okay.

THE COURT: In other words, you want to take his deposition?

MR. FARISH: Yes, sir, to find out what these numbers mean. This is the first time I have ever gotten anything.

THE COURT: What about a deal? What about if you produce your man and they produce their man?

MR. FARISH: Well, I can't control Mr. Kirk, sir. If I could control him—As you well know, he has a mind of his own. I don't think his wife could even tell him what to do.

I'll just put a subpoena on this man here, too. We just will play it by the rules.

MR. LAW: That won't be necessary.

MR. ALBURY: What's he going to be allowed to inquire into?

MR. LAW: We are not going to get that squared away.

MR. FARISH: Net worth and operating statement.

MR. ALBURY: The facts—Wait a minute, operating statement including what now? The facts supporting these figures that we have?

MR. FARISH: Yes. When you give a statement like income for the corporation for the year—well, they didn't get [12] here till '69, I guess '69, don't even have '70.

MR. LAW: Those are the answers to your questions, Joe.

MR. FARISH: That's right.

MR. LAW: They are answers to interrogatories.

MR. FARISH: You don't give me the year '70. Anybody that believes that the newspaper made $144,000.00 would be out of their mind.

So, sir, I need to ask him to produce his books and records. At the same time we'll give him a subpoena and just ask him about his operating statement since this group invaded our area and also their net worth and how they arrived at it. Just intangible can mean many things. It's very vague. Doesn't even meet the Court's order or the stipulation of counsel, which is worthless.

THE COURT: On the new witnesses, there ought to be a cut-off date.

MR. FARISH: Yes, sir.

THE COURT: And you also ought to notify them in writing and a copy to the Court.

MR. FARISH: All right, sir.

MR. ALBURY: What are we doing now, going to be allowed to add new witnesses?

THE COURT: If someone—Now, I would require that it would be that you would have just discovered a witness, that [13] you're not just holding back.

MR. FARRISH: Yes, sir. I understand. I have tried to, I listed everyone I can.

THE COURT: So the cut-off date would be ten days before trial.

MR. FARISH: All right, sir. That would be 8/21.

THE COURT: Realizing, of course, even my order says no more depositions, if someone comes up and they ask to take their deposition, I'd grant it.

MR. ALBURY: On that point we have one we scheduled, but the man has been on a leave of absence. That's Dewey Dodd in Atlanta. He got back in yesterday.

MR. FARISH: You haven't noticed me, have you?

MR. ALBURY: No. We can take it next week. We didn't notice it because we couldn't take it before the pretrial. He got back Monday. We can take it next week, if the Court will permit.

THE COURT: I want all the loose ends tied up.

MR. ALBURY: We have already appointed the commissioner to take it, but we couldn't get him.

THE COURT: I don't know whether I can go along on this last paragraph, Plaintiff reserves the right to introduce additional exhibits in the form of newspaper articles.

MR. FARISH: Well, they keep writing them, sir. They write them every day. They had one here day before yesterday, [14] sir.

THE COURT: Concerning this?

MR. FARISH: Well, it's bombarding Mr. Early here; the headline, "Early cuts budget." Well, he hasn't got anything to do with the cutting of the budget. He has to present what he feels are the best items to be presented to the board and they just keep on maligning him. That's the point. I think it's going toward the motive, sir. Even though the articles themselves are not a part of the litigation, it goes to their motivation sir, that they don't ever let up. It's unbelievable, when Your Honor gets into the situation, what these, this media is attempting to do, to brainwash the public up in our area and doing a job in some respects. It's evident by the fact that Judge White moved the case down here because he felt he couldn't get a fair jury and it goes to all that, sir. It's a question of each one to be valued for the purpose it was published. If it's a news worthy item, they are not picking on the man. That's a

different story, but when they are constantly pounding him on a day to day basis, they might do it two days before trial, sir.

MR. ALBURY: Judge, we ought to agree to let those articles go in so you can see what they do say. What he just referred to he misquoted. It said Early had been ordered to cut the budget because he brought in a budget of $12,000,000.00 over their income, when he knew what their income would be. They might want to bring in Thelma Weimer, who is one of his supporters [15] on TV castigating his administration for even considering such a budget.

This thing about Judge White's order, we had the order transcribed and presented the order to Your Honor. He says because of the busing situation in Palm Beach County and the mothers out marching up and down with signs saying "Early come walk the killer roads with us", that nobody, including a janitor in the school system in Palm Beach County, could get a fair trial.

Now, Your Honor has ordered that this not be brought up. That is why we filed the motion. These articles have nothing to do—we can give you dozens of United States Supreme Court decisions saying he has to prove that these words, the paragraphs that the Court has limited him to, are false to begin with before he gets anywhere else, and then he goes into the actual malice. Garrison vs. Louisiana, ill will.

THE COURT: That brings this to my mind. I would appreciate both of you submitting memos well ahead of the trial on the law that you feel will be involved in the trial.

MR. LAW: We have them, Judge.

THE COURT: I do need a liberal education on this.

MR. ALBURY: The first one is on general areas and there are several on particular items of evidence and so forth.

THE COURT: Fine.

MR. LAW: Do you have a copy of your memorandum, Joe?

[16] MR. FARISH: I'm going to hand it to you if you wait a minute. Patience, young man, patience.

MR. LAW: Not one of my virtues.

THE COURT: You all feel these are the points that will come up in trial?

MR. ALBURY: We haven't covered this thing of bringing in additional articles. We would like to submit a short memo on that.

THE COURT: I'd like it, both sides.

MR. ALBURY: All right, sir.

THE COURT: Any of these so-called additional exhibits, they ought to be presented within that same time limit as the witnesses.

MR. FARISH: All right, sir.

THE COURT: Cut off ten days, and I intend to hold that anything that has not been exhibited to either side, I mean if one hasn't, it will not be admitted. So, I don't know how you're going to show the Court that it's been looked at.

MR. FARISH: We'll initial it, like we said, Judge, on the back.

THE COURT: If anybody is unhappy with the fact that the exhibits aren't here today, I'm willing to set another time when they all can be in at the same time. I know it means another trip down here.

Let's put it this way. You look at each other's exhibits. [17] If there's any difference of opinion, I'll be willing to set another session to just involve the exhibits because I don't want a lot of thrashing around on this trial, arguing as to whether something has been presented or not.

MR. ALBURY: Well, I believe we have listed in our catalogue, Judge, every exhibit we intend to use and they are available to Mr. Farish at his convenience.

THE COURT: All right.

MR. FARISH: You have two editorials of WJNO. Were they transcribed?

MR. ALBURY: Yes.

THE COURT: All right. I think I'm going to do this. Within five days from today, I would like to have the pretrial catalogue of the Plaintiff amended to add a list of his exhibits.

MR. FARISH: All right, sir. File it with the Court?

THE COURT: And a copy to counsel.

MR. FARISH: All right, sir.

THE COURT: And again I say if for any reason that another supplemental pretrial is necessary, I'm willing to have it. I don't know when I'll put it in, but I'm willing to have it.

What else can we do?

MR. FARISH: As I understand it, Your Honor made a verbal ruling that Governor Kirk's deposition will be taken in accordance with the rules, and Your Honor's cut-off time does [18] not apply to that; neither does it apply to the witness—

MR. ALBURY: Roswell.

MR. FARISH: Roswell.

THE COURT: And this other one in Atlanta.

MR. ALBURY: Dodd.

MR. FARISH: I don't think we need an order on that. Just follow the procedures on that.

THE COURT: I believe I can just, when we are through today, just adopt the record.

MR. ALBURY: Fine. Will Your Honor—Well, will Your Honor enter an order as to the number of peremptory challenges and so forth?

THE COURT: Well, let's see. You've got—three parties are there?

MR. ALBURY: One Plaintiff, one corporate Defendant and four individual Defendants.

THE COURT: Do you all want to agree?

MR. ALBURY: 15?

MR. FARISH: That's agreeable.

THE COURT: All right, the Court will approve 15.

MR. ALBURY: Now, will the Defendants, each defense counsel have a voir dire? I represent two of the individuals here. He represents two of the individuals and the corporate entity. We don't propose to have a lengthy voir dire each, but if there is something he hasn't covered, I would like to cover it.

[19] THE COURT: Well, the Court feels if the man is represented, his attorney has a right to voir dire.

MR. ALBURY: All right, sir.

MR. FARISH: Who represents the corporation?

MR. LAW: I do.

MR. FARISH: You represent—I never did know who you all represented.

MR. ALBURY: He filed a notice of appearance as to the people he represented.

MR. FARISH: I don't read too good. You represent the corporation, that's all, right?

MR. LAW: No. ARPE and Kirkpatrick.

MR. ALBURY: And I have Favre and Sawyer.

THE COURT: I would appreciate receiving a letter pointing out to me the date of the order concerning the articles and limiting the use of the paragraphs, or whatever the order is.

MR. ALBURY: All right, sir.

THE COURT: And from both sides maybe a little letter or memo pointing out the various orders that have taken place or have been issued by another judge that

will be pertinent in the trial so that we won't have to thumb through the files. I'll just be aware of them.

MR. ALBURY: This is the order striking the articles and limiting it to paragraphs. This is the order granting summary judgment. If you would just like to keep those for your [20] reference.

MR. FARISH: Judge, that order is a little bit difficult to interpret, sort of a double negative order. In other words, it grants the striking of certain paragraphs, and obviously, the ones—or denies, rather, I forget which way it is, makes it a little difficult.

MR. ALBURY: I gave you the wrong order. I'm sorry. The order granting partial summary judgment is this one.

MR. FARISH: The wrong one. What's the date?

MR. ALBURY: Doesn't have any date on it.

THE COURT: Well, you can just send them to me. That goes for both sides.

MR. LAW: Judge, the suit started out with 108 articles, and then the articles were stricken, and instead excerpts from the articles by a bill of particulars. The Plaintiff was required to take the excerpts from the articles that were considered libelous and then many of these excerpts were, by summary judgment, declared as a matter of law not to be libelous, so we are left with about, excerpts from about 50 or 60 articles I think.

MR. FARISH: 55.

MR. LAW: 55 articles. So, that's—

MR. FARISH: It's real difficult to follow the order after you see it, Judge, because you have to have the articles in front of you and go back and forth.

MR. ALBURY: No. He sets out in his order the portions [21] that are left in. Very specific about it. He says the following portions, or the following paragraphs, the summary judgment is denied. As to all others, it's granted.

THE COURT: Well, I want to be thoroughly familiar with this order, so if you could just send me copies of the ones that you feel are pertinent and the ones you feel are pertinent, and if you want to underline your thoughts, each side, that suits me fine, too.

MR. ALBURY: That's the end of my checklist.

THE COURT: How about you?

MR. FARISH: I don't have anything else, sir.

THE COURT: All right, then I will adopt this as the pretrial order, and if you would type what you have today and submit it to the Court, please.

[22] CERTIFICATE

I HEREBY CERTIFY that the foregoing, pages 1 to and including 21, is a true and correct transcription of my stenographic notes of testimony taken and proceedings had before the Honorable GEORGE RICHARDSON, JR., Presiding Judge, at Broward County Courthouse, Fort Lauderdale, Broward County, Florida, on the 19th day of July, 1972, commencing at 10:00 o'clock A.M.

IN WITNESS WHEREOF I have hereunto affixed my hand this 31st day of July, 1972.

/s/ Leo A. Koenig
Reporter

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing Brief in Opposition to Petition for Writ of Certiorari have been furnished John F. Law, Jr., Esq., Ryan, Taylor & Law, P.O. Box 14577, North Palm Beach, Florida 33408, Attorneys for Petitioners, by mail, this 30th day of November, A.D. 1973.

Jos. D. Farish, Jr.
Attorney